

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Case No. 1:21-cv-00679-FB-RML

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2857 WEST 8th STREET DEVELOPERS, LLC,

Plaintiff,

ANSWER

-vs.-

BLINK HOLDINGS, INC.,

Defendant.

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Defendant, Blink Holdings, Inc. (“Blink”) by and through its undersigned attorneys, Blank Rome LLP, hereby answers the Complaint of Plaintiff, 2857 West 8th Street Developers, LLC (“Plaintiff”) filed on November 19, 2020 (the “Complaint”), and transferred to this Court on February 8, 2021, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Admits the allegations of Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint states a legal conclusion to which no response is required. Blink respectfully refers all matters of law to the Court.
4. Paragraph 4 of the Complaint states a legal conclusion to which no response is required. Blink respectfully refers all matters of law to the Court.
5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required. Blink respectfully refers all matters of law to the Court.
6. Neither admits nor denies the allegations contained in Paragraph 6 of the Complaint and respectfully refers the Court to the Lease for a complete and accurate statement of its terms.

7. Neither admits nor denies the allegations contained in Paragraph 7 of the Complaint and respectfully refers the Court to the Lease for a complete and accurate statement of its terms.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint states a legal conclusion to which no response is required. Blink respectfully refers all matters of law to the Court.

10. Paragraph 10 of the Complaint states a legal conclusion to which no response is required. Blink respectfully refers all matters of law to the Court. However, Blink denies that it that Landlord is owed money under the Lease.

11. Denies the allegations of Paragraph 11 of the Complaint.

COUNT ONE

12. Blink incorporates each and every response to Paragraphs 1 through 11 of the Complaint as if fully set forth herein.

13. Denies the allegations contained in Paragraph 13 of the Complaint.

14. Denies the allegations contained in Paragraph 14 of the Complaint.

15. Denies the allegations contained in Paragraph 15 of the Complaint.

16. Denies the allegations contained in Paragraph 16 of the Complaint.

The paragraphs immediately following Paragraph 16 of the Complaint state requests for relief to which no responsive pleading is required. To the extent responsive pleadings are required, Blink denies Plaintiff is entitled to any relief whatsoever and specifically denies that Plaintiff is entitled to the relief demanded in the 'WHEREFORE' clause, and further denies any allegations in the Complaint not equivocally admitted herein.

STATEMENT OF AFFIRMATIVE DEFENSES AND OTHER DEFENSES

17. Blink asserts the following affirmative and other defenses without assuming any burden of production or proof that it would not otherwise have.

FIRST DEFENSE

18. Plaintiff's Complaint, in whole or in part, fails to state a cause of action upon which relief can be granted as a matter of fact and/or law.

SECOND DEFENSE

19. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel, waiver and/or other equitable defenses.

THIRD DEFENSE

20. Plaintiff's claims are barred, in whole or in part, by the doctrines of avoidable consequences and/or unclean hands.

FOURTH DEFENSE

21. Plaintiff's claims are barred to the extent Plaintiff failed, refused, and/or neglected to mitigate or avoid the damages complained of in Plaintiff's Complaint, if any.

FIFTH DEFENSE

22. To the extent that Blink did not perform obligations under the Lease, non-performance is excused due to COVID-19 and the mandatory closing of fitness centers in New York, including the relevant premises, because performance of Blink's obligations under the Lease was rendered impossible in light of the associated governmental lockdowns.

SIXTH DEFENSE

23. To the extent that Blink did not perform obligations under the Lease, non-performance is excused due to COVID-19 and the mandatory closing of fitness centers in New York, including the relevant premises, because the purpose of the Lease was frustrated.

SEVENTH DEFENSE

24. To the extent that Blink did not perform obligations under the Lease, non-performance is excused because COVID-19 and the mandatory closing of fitness centers in New York, including the relevant premises, caused a casualty.

EIGHTH DEFENSE

25. Plaintiff's claims are barred, in whole or in part, by the doctrines of force majeure, frustration of purpose, and commercial impracticability and/or impossibility all as a natural consequence of COVID-19 and through no fault of Blink.

NINTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, by superseding and/or intervening causes, including, but not limited to superseding and/or intervening acts of third parties over which Blink has no control and bears no responsibility.

TENTH DEFENSE

27. Blink is absolved from any and all liability for the wrongs alleged in the Complaint by reason of its full compliance with all statutes, regulations, or other laws in effect at the time of the conduct alleged in the Complaint.

ELEVENTH DEFENSE

28. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or filings periods, and/or by Plaintiff's failure to satisfy administrative, procedural

and jurisdictional prerequisites for bringing suit under the applicable laws, including but not limited to the New York Real Property Actions and Proceedings Law.

RESERVATION OF RIGHTS

29. In addition to the foregoing defenses, Blink retains the right to amend its Answer to raise additional affirmative defenses and other defenses or pursue any available counterclaims against Plaintiff as those claims become known during this litigation.

WHEREFORE, Blink respectfully requests that the Court:

- (a) Dismiss the Complaint in its entirety, with prejudice;
- (b) Deny each demand and prayer for relief contained in the Complaint;
- (c) Award Blink its reasonable attorney's fees and costs, incurred in defending against this action; and
- (d) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York

February 16, 2021

s/ Ryan E. Cronin
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